REMARKS

The Office Action mailed on September 14, 2010, considered and rejected claims 1-10, 12-18, 20-35 and 37-39. Claim 23was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-10, 12-18, 20-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Martin-Leon* (U.S. Publ. No. 2001/0016490) in view of *Beros* (U.S. Publ. No. 2004/0009750).[1]

By this paper, claims 1, 23, 24 and 37-39 have been amended, while no claims have been added or cancelled.[2] Accordingly, following this paper, claims 1-10, 12-18, 20-35 and 37-39 remain pending, of which claims 1, 23, 24 and 38 are the independent claims at issue.

As reflected above, the pending claims generally relate to detecting devices or other resources that are near each other, and notifying the mobile clients of the proximity of other mobile users. As reflected in claim 1, for example, a method includes obtaining signal strength data of a first mobile client station with respect to signals received by the first client station from at least one stationary base station. Signal strength data is also obtained for other client stations with respect to signals received by the other client stations from the at least one stationary base station. The other client stations and the first client station being are remote relative to the at least one stationary base station, and at least one of the other client stations is mobile. Signal strength data of the first client station is compared with that of the other client stations. Additionally, the signal strength data of the first client station is compared with simulated signal strength data of a non-networked, non-electronic, fixed resource. Remote from the first client station and the other client stations, it is determined that the first client station is proximate one or more of the other client stations or the non-networked, non-electronic, fixed resource. The determination is based on the signal strength data of the first client station, signal strength data of the other client stations to the at least one stationary base station, and the simulated signal strength data of the fixed resource. The first client station is sent an identification of the one or more other client stations or of the non-networked, non-electronic, fixed resource determined to be proximate the first client station. Claim 23 recites a computer program product capable of being executed to perform a similar method. Claim 24 recites a system that includes a client device capable of receiving and providing information used in a method similar to that of claim 1. Claim 38 also recites a similar method in which the comparing and determining of the proximity of multiple other remote client devices is performed at a base station, and the proximity information also includes a notice of an identity of the user of the second mobile client device.

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Support for the claim amendments may be found within the Applicant's application as originally filed. For example, the claim are clearly supported at least by the disclosure in paragraphs 4, 14, and 81 as numbered in the published version of the original application (U.S. Patent Publication No. 2004/0236850), as well as in the originally filed claims and figures.

A. Rejection under 35 U.S.C. § 101

As reflected above, claim 23 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, claim 23 was rejected as being "embodied in a carrier wave." Applicant respectfully traverses.

In particular, it will be noted that in Applicant's application, computer-readable media is described as encompassing at least two types of media. In particular, computer-readable media may include "storage media" or "communication media." Computer storage media is then described as including volatile and nonvolatile, removable and non-removable media, and includes, for instance, RAM, ROM, EEPROM, flash or other memory, CD-ROM, DVD or other optical disk storage, magnetic storage, or any other medium which can be used to store the desired information. Communication media is described as encompassing data in a modulated data signal such as a carrier wave or other signal transport. (*See* ¶ 27 of U.S. Patent Publication No. 2004/0236850).

Applicant respectfully submits that from the above, it is apparent that communications media may include carrier waves; however, storage media does not. Claim 23 as previously presented specifically was directed to a "storage medium" rather than a "communications medium" and for at least that reason was statutory. Nevertheless, Applicant has amended the claim to clarify that at least a portion of the computer-readable media is not only storage media, but is non-communication type media. Inasmuch as only communication media is recited as encompassing a carrier wave, Applicant respectfully submits that such a claim is therefore clearly drawn to an article of manufacture which fits within the statutory classes of 35 U.S.C. § 101.

B. Rejections under 35 U.S.C. § 103(a)

Applicant respectfully notes that while the cited art generally relates to proximity of devices and wireless telephone technologies, they fail, whether cited alone or in combination, to disclose or reasonably support the invention as recited in the pending claims. For example, among other things, the cited art fails to disclose, reasonably support, or enable determining that a first client station is proximate one or more other client stations and/or a fixed, non-electronic, non-network resource, and doing so remote from the first client station or the other client stations based on signal strength data obtained relative to base towers. Indeed, in the Office Action, the Office does not even assert that a determination is made "remote from the first client station and the other client stations." The Office has entirely ignored such element, although such element is expressly recited in the claims. (*See* Office Action, p. 4). Accordingly, the Office has not even asserted a *prima facie* case of obviousness, and therefore no additional response is necessary.

Nevertheless, Applicant notes that the Office further expressly acknowledges that the *Martin-Leon* reference lacks a teaching for determining when client stations are proximate each other. (Office Action, pp. 4, 10). The Office does assert that *Martin-Leon* teaches comparing signal strength data of a first mobile client device with signal strength data of a second mobile client device (Office Action, p. 10); however, Applicant respectfully submits that such is clear error. In particular, the Office references a teaching in *Marin-Leon* that relates to assessing traffic density by sending a test signal from base stations to mobile devices, which test signal can result in mobile devices responding with signal strength reports. (¶¶ 11-15). Notably, sending a test signal and receiving a response is not disclosed as involving a comparison of signal strength data from one device relative to that of another. Indeed, as noted by *Martin-Leon* such data may be used to detect the best location for micro or pico cells, identify congestion problems, and identify interference locations. (¶¶ 16-20). None of these purposes requires any comparison of one device relative to the other, but rather can be calculated based on the quality of each signal strength and/or the number of responses received.

Furthermore, while the Office cites to *Beros* as teaching an act of determining that first and second mobile clients are proximate, the teachings of *Beros* actually directly teach away from the claims when considered in their entireties. In particular, the claims recite that the determination is made "based on the signal strength data" of the client stations. The Office has conveniently also failed to even assert that *Beros* makes any determination "based on signal strength data." (Office Action, p. 4). The reason for this is clear as *Beros* specifically teaches that existing cellular phone technology with data supplied by cellular phones is undesirable as it lacks sufficient range. As a result, *Beros* teaches that rather than using signal strength data (*i.e.,* relative to base stations), short-range radio frequency communications and/or GPS should instead be used. (¶¶ 14-17). Thus, while the claims teach that the signal strength data is determined to obtain proximity information, *Beros* expressly teaches that signal strength data *should not* be used to obtain proximity information, and that instead other technologies should be employed.

While the claims are thus clearly distinguished from the art for at least these reasons, Applicant notes that the claims have been amended to include subject matter previously recited in pending claims, but also clearly not considered by the Examiner. As this is already the seventh action in this case, the amended claims are presented merely to expedite allowance and issuance of the present case, with the right to pursue previously presented or other claims in a continuation.

The amended claims further recite that a determination of proximity includes use of simulated signal strength data for a non-networked, non-electronic fixed resource. Such a claim element was previously presented in claim 39. With regard to such a claim element, the Office references *Beros*. In particular, the Office references paragraphs 15, 17, 20 and 30-32. Applicant respectfully submits that such reliance is clearly erroneous.

For instance, paragraph 15 continues the discussion of paragraph 14, which describes use of cellular phone platforms, and allows users of cellular phones to be within eyesight and determine if they are physically attracted to each other. Clearly, a cellular phone is an electronic device, and further communicates over a cellular phone network. No signal strength is simulated, and nothing about the user of the device appears to be fixed.

Paragraph 17 describes a method for detecting mobile device proximity using short-range radio frequency communication and/or GPS based on a comparison and evaluation of predetermined data associated with a person transporting a mobile device for which detection is sought. The detection occurs by detecting the mobile device. Again, the mobile device is clearly electronic and/or networked, is not fixed (nor is the user fixed), and lacks any simulated signal strength.

Paragraph 20 is equally deficient. In this paragraph, a method relates to storing an identifier of a mobile device and data associated with the person transporting the mobile device. The method detects the mobile devices and compares data sets associated with the people, and provides a notification when an overlap exists. Again, however, there is no fixed device. There is similarly no simulated data strength, and the detected device is clearly electronic and/or networked.

Paragraphs 30-32 merely expand on such earlier discussions. In particular, a data set associated with a person is stored, along with the Bluetooth wireless radio address of the mobile device transported with the user. The person can control the Bluetooth radio signal strength to control the distance at which proximate mobile devices are detected. Notably, such detection thus occurs *at the mobile device* rather than at a location remote from the mobile device. It is after detection that a connection is made with a central database, and a comparison of the data sets for compatibility is made. Thus, the comparison is made of personal information rather than signal strength, as signal strength was previously used to determine whether the data set comparison should proceed. If there is overlap, the central database provides information that the mobile devices can use.

It will thus be noted that the entirety of *Beros* and *Martin-Leon* are directed to mobile devices. There is nothing in either reference that relates in any way to a simulated signal strength, to a comparison of a simulated signal strength to other signal strength data, or to using signal strength data to determine proximity to a non-networked, non-electronic fixed resource. Indeed, it is unclear how it would even be possible to use the proximity detection system of *Beros* if the devices were non-electronic and/or non-networked as they use Bluetooth radio and/or GPS to identify other mobile devices, and then further must communicate with a central database to allow for further potential notifications and communications to occur. Clearly, as such devices useful for their intended purpose only as electronic devices, the cited references clearly fail to enable the pending claims which include use of a simulated signal strength for detecting proximity related to non-networked, non-electronic fixed resources.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any Official Notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required reason why one skilled in the art would have modified the cited art in the manner officially noticed. Applicant further notes that inasmuch as the claims have been amended to incorporate subject matter previously recited in the claims, Applicant's no new search is necessitated by Applicant's amendments. Accordingly, any subsequent Office Action should not be made final as the cited references clearly fail to render the pending claims unpatentable.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 13th day of December, 2010.

Respectfully submitted,

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